

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

VERNON C. HUNTER III

) OTA Case No. 19044640

) Date Issued: December 5, 2019

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OPINION

Representing the Parties:

For Appellant:

Vernon C. Hunter III

For Respondent:

Shanon Pavao, Tax Counsel III

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Vernon C. Hunter III (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing to assess additional tax of \$2,018, plus interest, for the 2014 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant established error in FTB's proposed assessment of additional tax.

FACTUAL FINDINGS

1. Appellant timely filed a 2014 California income tax return, reporting a taxable income of \$72,886.
2. On September 8, 2017, FTB received information from the Internal Revenue Service (IRS) indicating that, as a result of a federal audit, the IRS increased appellant's federal taxable income by \$21,730, from \$60,122 to \$81,852, due to the disallowance of unreimbursed employee expenses of \$17,250 and cash contributions of \$4,480. Appellant did not report the federal changes to FTB.

3. Based on the federal changes, FTB issued a Notice of Proposed Assessment (NPA) on December 6, 2018, which increased appellant's California taxable income by \$21,730, from \$72,886 to \$94,616, and proposed an assessment of additional tax of \$2,018, plus interest.
4. Appellant protested the NPA. FTB affirmed the NPA in a Notice of Action dated March 11, 2019. This timely appeal followed.

DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (Rev. & Tax. Code, § 18622, subd. (a).) A deficiency determination based on a federal audit is presumptively correct, and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a determination based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant contends that he provided documentation to the IRS and, as a result, the IRS lowered its assessment of federal tax. In support, appellant provides an IRS Form 886-A, Explanation of Items, which shows federal adjustments to disallow unreimbursed employee expenses of \$17,250 and cash contributions of \$4,480.¹ The adjustments indicated on the Form 866-A are consistent with the adjustments made by FTB in the same amounts. Additionally, appellant's federal Individual Master File transcript does not indicate that the federal action was modified or reversed. The transcript indicates that appellant's federal taxable income is \$81,852, which is consistent with the revised federal taxable income on which FTB based its adjustments. Appellant provides no evidence to show that the IRS revised its assessment. Therefore, appellant has not shown error in FTB's proposed assessment, which is based on the federal determination.

¹ The Form 886-A also indicates an adjustment to reduce appellant's federal alternative minimum tax (AMT) by \$2,073 to zero. Appellant reported an AMT of zero on his California tax return.

HOLDING

Appellant has not established error in FTB's proposed assessment of additional tax.

DISPOSITION

FTB's action is sustained.

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Josh Lambert

Administrative Law Judge

We concur:

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Teresa A. Stanley

Administrative Law Judge

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Alberto T. Rosas

Administrative Law Judge